IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 554 of 2000

in

SPECIAL CIVIL APPLICATION No 7361 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINBHAI M TRIVEDI

Versus

RAMESHBHAI T BHATT

Appearance:

MR VIMAL M PATEL for Appellant
MR KG PANDIT for Respondent No. 1
DS AFF.NOT FILED (R) for Respondent No. 2
MR YN RAVANI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 23/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The respondent no.1 - original petitioner had filed Special Civil Application No 7361 of 1988 before this court praying that Gujarat Housing Board (respondent no.2 in the petition) be directed to hand over the possession of the disputed premises situated at 78/343, Shrinagar, Gujarat Housing Board, Sector No.24, Gandhinagar. Except this, there was no other prayer in the petition. The learned Single Judge (Coram: S.K. Keshote, J.), by judgment and order dated 29th June, 2000, disposed of the main writ petition by directing the Board not to interfere with the possession of the petitioner. Surprisingly, the learned Single Judge observed in para 7 of his order that "the house in dispute may be transferred in the name of the petitioner in the record". Aggrieved of this, the appellant - original respondent no.3 has filed this appeal.

2. Mr. Patel, learned counsel for the appellant vehemently submitted that it is not in dispute that the present appellant - original respondent no.3 was allotted the disputed premises and the original petitioner was occupying the same as tenant. He has already filed suit for eviction against the tenant and he has no grievance against the order passed by the learned Single Judge restraining the board from interfering with the possession. However, he submitted that in absence of any relief in the petition and, even otherwise, it was not open to the learned Single Judge to observe that the house in dispute be transferred in the name of the original petitioner. We find lot of substance in this submission. In absence of any specific relief, no such observation can be made or direction be issued to the board. For transferring the ownership, remedy of writ petition was not available to the petitioner and, in fact, such prayer was also not made.

3. In view of the above, this appeal filed against the part of the order passed by the learned Single Judge in para 7 of the judgment is required to be allowed and accordingly, it is allowed and the observations/directions issued by the learned Single Judge in his judgment and order, directing the board to transfer the house in the name of the original

petitioner, is hereby quashed and set aside.

4. Before parting, we must state that this matter was listed on our board for the 10th time but none was present for the respondents. Therefore, the matter was heard and disposed of after hearing the learned counsel for the appellant.

(B.J. Shethna, J.)

(M.C. Patel, J.)

hki